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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/830,560	05/07/2001	Nichimu Inada	206253US3PC	1157

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EXAMINER

THANH, QUANG D

ART UNIT PAPER NUMBER

3764

DATE MAILED: 02/19/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action

Application No.

09/830,560

Applicant(s)

INADA ET AL.

Examiner

Quang D. Thanh

Art Unit

3764

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 02 February 2004 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on _____. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☐ The proposed amendment(s) will not be entered because:
- (a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);
- (b) ☐ they raise the issue of new matter (see Note below);
- (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____

3. ☐ Applicant's reply has overcome the following rejection(s): _____.
4. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☐ For purposes of Appeal, the proposed amendment(s) a) ☐ will not be entered or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: _____

Claim(s) objected to: _____

Claim(s) rejected: _____

Claim(s) withdrawn from consideration: _____

8. ☐ The drawing correction filed on _____ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____
10. ☐ Other: _____

Continuation of 5. does NOT place the application in condition for allowance because: Applicant's arguments filed 02/02/2004 have been fully considered but they are not persuasive.

In response to applicant's argument re claims 40-41 that the reference Canto (WO 98/57611) fails to show that "the sensor 17 is somehow configured to detect when a supporting arm has reached a prescribed range of pivotal positions", the examiner respectfully disagrees. Canto clearly teaches that the axes (2,4) connect with a conventional element for applying the supporting massage arm 5 (p. 9, lines 3-6), and that the magnetic sensors 17 connected to a microprocessor, which permit the situation of the angles of the axes (2,4) to be known with exactitude. Since these sensors can detect the angles of the axes, and the supporting arms are connected to the axes, therefore the sensor also would detect the pivotal positions (as broadly interpreted as angles) of the supporting arms. Furthermore, Canto also teaches that the axes (2,4) include sensors (17) which inform on the angular position (see abstract). With respect to the limitation "a prescribed range of pivotal positions", since the sensors are connected to a microprocessor, it is inherent that the microprocessor would be programmable to detect a certain predetermined range of angles if desired.

In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).


In response to applicant's arguments against the reference Otuka individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

In response to applicant's remark re claim 42 that "there is no teaching or suggestion in Otuka et al. of sensing the position of a supporting arm", Canto already teaches that the same system is also employed to control the vertical location of the massage motors, and therefore it is inherent that other sensors 17 would be also able to detect the vertical positions of the supporting arms. However, if Canto's sensors 17 are not viewed as means for detect the vertical positions of the supporting arms, then Otuka is cited to merely teach a massager having a vertical position detector 61 comprising sensors S1, S2 for detecting vertical positions of the massaging elements (col. 5, lines 39-66). Therefore, it would have been obvious to one of ordinary skill in the art at the time of invention was made to include vertical-position sensors in Canto's device, as suggested by Otuka et al, for the purpose of providing means to vertically detect the position of the massage element with respect to the user's body in order to selectively massage a portion of the user's body as desired.

In response to applicant's remark re claim 39 that "neither Canto nor Otuka teaches or suggest a sensor configured to detect a pivotal position of a supporting arm", the examiner respectfully disagrees. Canto's sensor differs from the claimed invention is that it is not configured to detect a position of a specific portion of the user with respect to the device by determining a relationship between a vertical position and a pivotal position of the supporting arm. However, Canto already teaches a plurality of sensors 17 configured to detect a pivotal position of a supporting arm as mentioned above and these sensor having multiple tasks of controlling the turning angle of the different shafts and transmitting this to the microprocessor. These multiple tasks include multiple options of for distancing between the vertical massaging wheels, and multiple pressure options in the vertical massaging. Canto also teaches that the same system is employed to control the vertical location of the massage motors, and therefore it is inherent that sensors 17 would be also able to detect the vertical positions of the supporting arms. Moreover, Otuka also teaches a massager comprising a vertical position detector 61, a width detector 74 and a projection detector 76; and each detector having sensors for detecting vertical positions, distance spacing and various projections of the massaging elements (col. 5, lines 39 to col. 6, line 68). Therefore, it would have been obvious to one of ordinary skill in the art at the time of invention was made to include a sensor to detect both vertical and pivotal positions in Canto's device, as taught by Canto and suggested by Otuka et al, for the purpose of providing means to detect both vertically and pivotally the position of the massage element with respect to the user's body in order to selectively massage a portion of the user's body as desired.

In response to applicant's remark re claims 18-49 that "there is no teaching or suggestion in Canto of a sensor that detects the position of a user's shoulder", applicant's attention is directed to figure 4, which shows that the device can be moved up to the shoulder and down to the lower back of a user.

Re claim 43, applicant's attention is directed to col. 5, lines 56-61, in which Otuka teaches that the sensor holders are provided with sensors each comprising light emitting and receiving elements.


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